IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

W.P.No.11774 of 2003 and W.P.No.14245 of 2004

-

WRIT PETITION NO: 11774 of 2003

Between:

Council of Architecture rep. by its Registrar, India Habitat Centre, Core 6 A, I floor, Lodhi Road, New Delhi - 110 003.

..... PETITIONER

AND

1. The Jawaharlal Nehru Technological University, Rep. by its Registrar, Masab Tank, Hyderabad.
2. The All India Council for Technical Education, rep. by its Regional Officer, AICTE Southern Region Office, Shastri Bhavan, 26, Haddows Road, Chennai - 600 006.
3. The State of A.P., rep. by its Secretary, Dept. of Education, Secretariat Buildings, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction particularly one in the nature of a Writ of Mandamus declaring the action of R-1 and R-2 in prescribing lesser qualifications for admission to the B.Arch. course than those prescribed by the petitioner Council in the policy resolution F. 37-3 (Legal/(4-2002), dated 20th November, 2002 (published in the Union of India, Extraordinary Gazette Part III Section 4), Advertisement No. AICTE/22/2002 (issued by R.2) and the advertisement dt.15/04/2003 (issued by R.1) as illegal, arbitrary and violative of Art.14 of the Constitution of India and consequently direct the respondents to follow and implement the Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983, in respect of admission to B.Arch. Course.

Counsel for the Petitioner: MR.M.S.RAMACHANDRA RAO

Counsel for the Respondent No.1: MR.C.KODANDARAM

Counsel for the Respondent No.2: MRS.C.SINDHU KUMARI

Counsel for Respondent No.3: GP FOR HIGHER EDUCATION

WRIT PETITION NO : 14245 of 2004

Between:

Sunkara Appa Rao Memorial Educational Society, H.No.8-14, Vikas Nagar, Dilsuknagar, Hyderabad, rep by its Secretary.

..... PETITIONER

AND

1. All India Council for Technical Education, Indira Gandhi Sports Complex, I.P. Estate, New Delhi 110 001.
2. Council of Architecture India Habitat Centre, Core 6 A, 1st Floor, Lodhi Road, New Delhi.
3. Government of A.P. rep by its Principal Secretary, Higher Education, Education Department A.P. Secretariat, Hyderabad.
4. Director of Technical Education Govt., of A.P. 5th Floor, B.R.K. Bhawan, Hyderabad.
5. Convenor PACET-2004 (Admission) Sakathika Viday Bhawan, Masab Tank, Hyderabad.
6. JNTU, Kukatpally rep by its Registrar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the process of admission into the Bachelor of Architecture Course for the year 2004-05 based on the approval of All India Council for Technical Education, New Delhi without consultation with the Council of Architecture, New Delhi, as required under Section 10(k) of All India Council for Technical Education Act, 1987 as illegal and arbitrary and (b) to declare the proceedings Dt.16.6.2004 of Assistant Director, AICTE, New Delhi rejecting the application of the petitioner for starting the additional course in Building Construction Technology for the year 2004-05 in S.A. R College of Architecture being run by the petitioner society as without jurisdiction, illegal and arbitrary by issuing an appropriate writ of Mandamus or direction.

Counsel for the Petitioner: MR.M.V.S.SURESH KUMAR

Counsel for the Respondent No.1: MRS.C.SINDHU KUMARI

Counsel for Respondent No.2: MR.M.S.RAMACHANDRA RAO

Counsel for Respondents 3 to 5: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.6: MR.C.KODANDARAM

The Court made the following:

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.11774 of 2003 and W.P.No.14245 of 2004

COMMON ORDER:

A learned single Judge of this Court while admitting W.P.No.14245 of 2004 directed to post that petition along with W.P.No.11774 of 2003. So, both the W.Ps were heard together and a common order is being passed.

2. W.P.No.11774 of 2003 is filed by the Council of Architecture (COA) created under the Architects Act, 1972 (for short '1972 Act') to declare the action of the first respondent Jawaharlal Nehru Technological University (JNTU) and the second respondent All India Council For Technical Education (AICTE) constituted under the All India Council for Technical Education Act, 1987 (for short '1987 Act') in permitting lateral entry into the Bachelor of Architecture course in the second year, as per its (AICTE's) policy Resolution No.F.37-3 (legal/4-2002) dated 20.11.2002, is arbitrary and violative of Article 14 of the Constitution and for a consequential direction to the respondents to follow and implement only the Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983 (the Regulations), framed by it under 1972 Act, for admissions into the Bachelor of Architecture course.

3. The undisputed facts are, till the notification impugned in this petition was issued by the JNTU, admissions to Bachelor of Architecture Course in Andhra Pradesh were taking place in accordance with the Regulations, which do not provide for lateral entry. A sub-committee constituted by AICTE and COA considered the issue of providing lateral entry to Diploma in Architecture holders into the degree of Bachelor of Architecture to create employment opportunities etc. to them and recommended such lateral entry being provided to the Diploma in Architecture if they joined the Diploma course after a pass in 10+2 examination, in case they secured 60% marks in aggregate in the Diploma in Architecture examination. But COA did not agree thereto. AICTE, probably to give effect to the resolution of the

sub-committee, without the concurrence of COA, published the impugned policy Resolution No.F.37-3 (legal/4-2002) dated 20.11.2002, providing lateral entry to students who acquired three years Diploma in Architecture with a minimum of 60% aggregate marks from any of the AICTE and COA approved institutions after pass in 10+2 level, to a maximum of 10% of the sanctioned intake of those institutions from which at least one batch of five years Bachelor of Architecture students had graduated. COA made a vain attempt in requesting AICTE to withdraw the said resolution. JNTU, in pursuance of the aforesaid resolution of the AICTE, issued the impugned notification for 2003-04 containing a provision for lateral entry. Hence, W.P.No.11774 of 2003.

4. W.P.No.14245 of 2004 is filed by the society, which is running a Technical Education college imparting Bachelor of Architecture course. It made an application for introduction of a new course as per the procedure prescribed. COA granted its approval for introduction of the course. Government, which also gave its approval, by mistake or otherwise, instead of ticking the column relating to 'New Course', ticked the column relating to 'intake' in the copy marked to AICTE. On the basis that government did not signify its 'No objection' for introduction of 'new course', but had signified its 'No objection' for increased intake, an officer in AICTE returned the application of the petitioner for introduction of the new course. Questioning the return of its application by the AICTE, petitioner filed this petition, seeking a direction to AICTE to consider its application for starting 'new course'.

5. The main contention of the learned counsel for the petitioner in W.P.No.11774 of 2003 is, since COA, by virtue of the powers vested in it by 1972 Act, framed the Regulations which do not provide for lateral entry, and since Regulation 3(1) provides for five years degree and that Regulation 4(1) prescribes minimum 50% aggregate marks in 10+2 level as a precondition for entry into Bachelor of Architecture course, respondents issuing the impugned notification, tinkering with the Regulation without the consent and concurrence of COA is unsustainable, as the duration of the course stands reduced to 4 years from 5 years by such lateral entry and 50% aggregate marks at 10+2 level is set at naught. Relying on the observation in **STATE OF MAHARASHTRA Vs. SANTOSH SHANKAR ACHARYA**; **J.K.COTTON SPINNING AND WEAVING MILLS COMPANY LTD. v. STATE OF**

U.P. and **ASWINI KUMAR GHOSE, INCORPORATED LAW SOCIETY, CALCUTTA HIGH COURT INTERVENERS Vs. ARABINDA BOSE** and Section 10(k) of 1987 Act, he contended that since Legislature engrafts every part of a statute for a specific purpose, merely because schedule to 1972 Act enables Diploma Holders in Architecture also being registered as Architects on its rolls, the contention of AICTE that COA is concerned only with enrolment of qualified Architects but not the course content, in view of Secs.2(g) and 10(h) of 1987 Act, cannot be accepted because 1972 Act is a Special Act and 1987 Act is a General Act and since it is well known that special law prevails over general law as held in **J.K.COTTON SPINNING AND WEAVING MILLS** case (2 supra), **U.P. STATE ELECTRICITY BOARD Vs. HARI SHANKAR JAIN** and **P.V.HEMALATHA Vs. KATTAMKANDI PUTHIYA MALIACKAL SAHEEDA**. Relying on the observations in **MUNICIPAL COUNCIL Vs. T.J.JOSEPH** and **STATE OF MADHYA PRADESH Vs. KEDIA LEATHER AND LIQUOR LIMITED** he contended that Legislature, while enacting a Law, should be deemed to have knowledge of the existing Laws on the same subject matter, and if such new law, does not provide for a repealing provision, it should be deemed that Legislature does not wish to repeal the existing law, and so the assumption on the part of AICTE that 1972 Act is impliedly repealed by 1987 Act cannot be accepted. Relying on the observation in **BHARATHIDASAN UNIVESITY Vs. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION** where the apex Court (in para-9 at page 684) held that 1987 Act does not contain evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies having their own assigned roles and functions to perform, contended that when the Legislature, in its wisdom, directed AICTE to act in coordination and consultation with other agencies, it is not open to the AICTE to act on its own, without reference to, or ignoring COA, since it is well known that when a statute prescribes a thing to be done in a particular manner, it should be done in that manner only or not at all, as held in **CHANDRA KISHORE JHA Vs. MAHAVIR PRASAD**; **RAMCHANDRA KESHAV ADKE Vs. GOVIND JOTI CHAVAREAIR**; **STATE OF UTTAR PRADESH Vs. SINGHARA SINGH** and **COMMISSIONER OF INCOME TAX MUMBAI Vs. ANJUM M H GHASWALA**. It is his contention that there was a Memorandum of Understanding (MOU) dated 05-07-2001 between the AICTE and COA, whereunder both the bodies were acting harmoniously till recently, but AICTE unilaterally terminated that MOU on 27-11-2003, for reasons known only to it, and contended that since AICTE in its “Guidelines for Admission to Engineering Degree

and Engineering Diploma Programmes" dated 15-06-1992 (hereinafter referred to as 1992 guidelines of AICTE) clearly stated that those guidelines do not apply to admissions into the degree courses in Architecture, Pharmacy, Applied Arts, etc. (for which separate admission guidelines were issued by the concerned organizations), it is clear that AICTE cannot take unilateral decisions, more so because students of Bachelor of Architecture Degree course, if they want to register with COA and practice as Architects, have to be registered under 1972 Act, and so such of the students who pass the degree granted by JNTU through lateral entry scheme, which it is not in accordance with the Regulations, would not in any event be entitled to register their names with COA. With regard to the correspondence filed by the AICTE along with the counter affidavit filed on its behalf, relating to sub-committee deliberations of representatives of AICTE and COA on the aspect of lateral entry, he contended that since COA vide its letter No.CA/5/2001/AIBATPE, dated 18-12-2001 had requested AICTE to keep the proposal of lateral entry in abeyance, and reiterated the same through its letters on 26-09-2002, 26-10-2002, 05-02-2003 and 11-03-2003 and since the Bombay High Court in **SHRI PRINCESHIVAJI MARATHA BOARDING HOUSE'S COLLEGE OF ARCHITECTURE v. STATE OF MAHARASHTRA** held that provisions of 1972 Act are not impliedly repealed by 1987 Act, and that the final authority for the purpose of fixing the norms and standards of Architecture education is only COA, notifications issued by the AICTE and JNTU impugned in the petition are liable to be quashed.

6. The contention of the learned counsel for the Petitioner in W.P.No.14245 of 2004 is that the proceedings impugned are liable to be quashed solely on the ground that the person who affixed his signature to the impugned proceedings has no jurisdiction either to consider or reject the application of the petitioner and since the said application was not even considered by the concerned officials in the AICTE, when the Government and the COA had given their 'No objection' for introduction of the new course.

7. The main contention of the learned senior counsel for AICTE is that since three writ petitions in W.P.Nos.36547 of 2003, 6403 of 2004 and 3654 of 2004 are

pending between AICTE and COA and others in the High Court of Madras and since in W.P.No.36547 of 2003, Madras High Court passed an interlocutory order directing AICTE and COA to carry on their respective functions as per the enactments under which they are created, it is not necessary for this Court to adjudicate the issue relating to the *inter se* powers of AICTE and COA, and contended that since AICTE preferred an appeal against the judgment in W.P.No.1174 of 2004 of the Bombay High Court, strongly relied on by the learned counsel for petitioner, that judgment did not become final. It is his contention that AICTE is taking steps to file an application before the Supreme Court to transfer all the cases pending between it and the COA in all the High Courts to the Apex Court and so this petition may await the orders that may be passed in the petition to be filed by AICTE. It is his contention that since Rules framed by the State of Andhra Pradesh in G.O.Ms.No.15 dated 15-03-2003 and G.O.Ms.No.39 dated 26-06-2003 for admission into the Bachelor of Architecture do not provide lateral entry and since the apex Court in **REGIONAL ENGINEERING COLLEGE, HAMEESPUR v. KURJEETH SINGH** held that admissions into the courses can be made only if the government prepares a scheme (Rules) in consonance with the scheme prepared by AICTE, adjudication on the question relating to lateral entry would be for academic interest and since courts do not decide purely academic questions, this petition is liable to be dismissed. It is his contention that since lateral entry, envisaged by the AICTE in its policy resolution dated 20-11-2002, applies to the entire country and since only such students who passed the examination in Diploma in Architecture with 60% marks aggregate, from institutions approved by the AICTE and COA after a pass in 10+2 examination would be eligible for lateral entry, and since that lateral entry is limited to 10% of the sanctioned intake in the Institutions from where at least one batch of five years Bachelor of Architecture degree course students had graduated, the said scheme cannot be found fault with merely on the ground that it gives a go bye to the minimum requirements prescribed by the Regulations. It is his contention that since a plain reading of Regulation 4(1) of the Regulations reading-

> "No candidate, with less than 50% marks in aggregate, shall be admitted to the architecture course unless he/she has passed an examination at the end of the new 10+2 scheme of Senior School Certificate Examination or equivalent with Mathematics and English as subjects of examinations at the 10+2 level."

shows that 50% marks, in aggregate, is not necessary, "unless" the candidate

passed 10+2 examination, it cannot be said that the policy resolution of AICTE dated 20-11-2002 is violative of Regulation 4(1) of the Regulations. It is his contention that since lateral entry scheme was prepared after deliberations with all the concerned, it is but a policy decision and so the same should not, usually, be interfered with by courts. Placing strong reliance on **THAPPAR INSTITUTE OF ENGINEERING v. G.SARMA**, **K.K.SIFORA v. D.E.O., KURNOOL, RAJENDRA PRASAD MATHUR v. STATE OF KARNATAKA, STATE OF RAJASTHAN v. LATA ARUN** and **BOARD OF ADULT EDUCATION AND TRAINING, NEW DELHI v. BOARD OF INTERMEDIATE EDUCATION** he contended that since issues relating to the equivalency of one qualification with another, or prescription of a particular qualification for admission into a particular course, are in the field of the concerned experts in Education, courts, usually, do not interfere with such decisions. It is his contention that in any event since 1987 Act, which deals with Technical Education, including 'Architectural Education', is a later enactment and since a representative of COA also is a member of AICTE, it (AICTE) has the power to determine the standards in technical education, and since 1972 Act deals with the procedure for registration of Architects, while 1987 Act deals with the Courses leading to the Degree of Architecture, and since 1987 Act does not state as to how the qualification mentioned in the schedule to 1972 Act can be obtained, and since petitioner did not state whether any Architectural Institution in this country was established after 1987 Act came into force without the approval of AICTE and with the approval of COA only, petitioner is not entitled to any relief. Relying on **T.J.Joseph** case (6 supra), **MUNICIPAL CORPORATION OF DELHI v. SHIV SHANKAR; SWASTIC RUBBER PRODUCTS LTD. v. RAJ BAHADUR MOTILAL PUNE MILLS LTD.; AJAY KUMAR BANERJEE v. UNION OF INDIA; DHARANGADHARA CHEMICAL WORKS LTD. v. DHARANGADHARA MUNICIPALITY; MUNICIPAL BOARD, BARELI v. BHARAT OIL COMPANY; SYNDICATE BANK v. PRABHA D. NAIK; STATE OF TAMILNADU v. ADHYAMAN EDUCATIONAL & RESEARCH INSTITUTE** and **JAYA GOKUL EDUCATIONAL TRUST v. COMMISSIONER AND SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT**

where it is held that in case of inconsistency between two enactments later enactment prevails, he contended that since 1987 Act exclusively deals with Technical Education, including Architectural Education, it prevails over 1972 Act and so the Regulations, if they are inconsistent with the provisions of 1987 Act or the

decisions taken by the AICTE, should yield to the decisions taken by the AICTE, more so because neither 1972 Act nor the Regulations contain provisions relating to approval either of a new institution or for introduction of any new course in any institution. It is his contention that only if a particular course with a particular qualification approved by the AICTE has to be included in the schedule to 1972 Act, as one of the recognized qualifications, can the COA examine the course content and decide whether to include that course in the schedule or not, and since Bachelor of Architecture course is already included in the schedule to 1972 Act, COA ceases to have authority to deal with the course content or the procedure for grant of approvals for new courses in such institutions. In re the contention of the learned counsel for petitioner with regard to 1992 guidelines of AICTE, the contention of the learned senior counsel for AICTE is that subsequent to issuance of those guidelines, there were deliberations between the experts in the field of Education, drawn from AICTE, COA and other institutions, and those experts took a decision that Diploma holders should be provided with career enhancement opportunity by providing lateral entry and so there are no grounds to interfere with the notifications impugned.

8. The point for consideration in W.P.No.11774 of 2003 is whether AICTE can take policy decision relating to entry in Bachelor of Architecture course, without the concurrence of the COA?

9. Since this petition is filed challenging the advertisement dated 15-04-2003 issued by JNTU calling applications for lateral entry into Bachelor of Architecture course also as per the policy resolution of the AICTE dated 20-11-2002, the fact that some other writ petitions, between the AICTE and COA, are pending in some other High Courts, and the fact that Madras High Court, in one such writ petition, gave a direction to them to act in their own sphere, cannot be a ground for delaying disposal of this case, more so because the decisions to be rendered by the other High Courts would be with respect to the lis before them, and will have no bearing on the advertisement issued by JNTU impugned in this petition. Similarly, the fact that AICTE is intending to file a petition for transfer of all the cases pending in several High Courts, to the apex Court, and the fact that an appeal against the order of the Bombay High Court relied on by the learned counsel for the petitioner is pending

before the apex Court, also are not grounds for delaying disposal of this petition, because there is no stay of hearing of this petition by the apex Court. For the above reasons, and since it is not known if AICTE would move such an application before the Apex Court or not, and since I heard the learned counsel for both sides at length, I am disposing of this petition.

10. There cannot be any dispute for the proposition that special law prevails over general law, and that the legislature, while making an enactment, makes it with a specific purpose, with knowledge of the existing laws and that special law prevails over general law and when there is no repealing provision, repeal of an existing provision cannot be inferred. So, I do not wish to refer to the various decisions relied on by the learned counsel for both sides on the above propositions.

11. The contention of the learned senior counsel for AICTE that since G.O.Ms.No.15 dated 15.03.2003 and G.O.Ms.No.39 dated 26.06.2003 issued by the government do not contain a provision for lateral entry, decision on the issue relating to lateral entry would be of academic interest, cannot be accepted, firstly because AICTE did not inform JNTU that it should withdraw the notification impugned in the petition on the ground that it is not in accordance with the G.Os. issued by the Government, and secondly because it, in fact, is supporting the notification issued by JNTU, though it is fully alive to the fact that the apex Court in **KURJEET SINGH** case (14 supra) relied on by him laid down that Rules not adopted by Government cannot be given effect to. So, by no stretch of imagination can it be said that the issue involved in this case is an academic issue.

12. Before considering the merits of the contentions raised by the learned counsel for the parties, I feel it relevant to refer to some of the provisions of 1972 Act and 1987 Act.

13. Section 45(1) of 1972 Act lays down that COA may, with the approval of the Central Government, make regulations, not inconsistent with the provisions of that Act or the Rules made thereunder, to carry out the purposes of that Act. Section

45(2) of 1972 Act relates to the matters with regard to which the COA can make such regulations under Section 45(1) of 1972 Act. Section 45(2)(e) of 1972 Act reads:

> "the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognized qualifications."

Therefore, it is clear that "Courses and Periods of study" relating to Architecture is within the purview of COA. So, there can be no doubt that question relating to 'lateral entry' in Bachelor of Architecture would be governed by Section 45(2)(e) of 1972 Act. By virtue of the powers vested in it by Section 45(2)(e) of 1972 Act, COA, admittedly, made the Regulations as long back as in 1983, which were published in the Gazette of India, Part-III Section 4, on 26-03-1983 and 27-08-1983 and they, admittedly, are still in force.

14. Para 3 and 4 of the Regulations read as under:

"**3. Duration and Stages of the Course**

1. The architecture course shall be of minimum duration of 5 academic years or 10 semesters of approximately 16 working weeks each inclusive of six months /one semester of approximately 16 working weeks of practical training after the first stage in a professional office.
2. The architecture course may be conducted in two stages.
3. The first 3 academic years / 6 semesters of approximately 16 working weeks each of the course shall be a basic standard course and shall be the first stage:

Provided that candidates admitted to the course shall complete the first stage within 5 years of admission to the course.

4. The second stage of the course shall be of 2 academic years / 4 semesters of approximately 16 working weeks each.
5. The completion of first stage shall not qualify candidates for registration under the Architects Act, 1972.

4. Admission to the Architecture Course

1. No candidate, with less than 50% marks in aggregate, shall be admitted to the architecture course unless he/she has passed an examination at the end

of the new 10+2 scheme of Senior School Certificate Examination or equivalent with Mathematics and English as subjects of examinations at the 10+2 level.

2. Where 10+2 scheme is not introduced, candidates must have passed after 11 years schooling the Higher Secondary/pre-university/pre-engineering or equivalent examinations in the Science group of any recognized University or Board with English, Physics, Chemistry and Mathematics as compulsory subjects.

3. The Institutions may subject the candidates, seeking admission to the architecture course, to aptitude tests specially designed to assess the candidates aptitude;

Provided that no separate aptitude tests may be conducted where admissions are made through competitive examinations.

4. The institutions shall not give weightage of more than 50% marks for aptitude tests in the matter of admissions."

So, it is clear that lateral entry into the course of Bachelor of Architecture is not provided by the Regulations.

15. Section 10 of 1987 Act deals with the functions of the AICTE.

Sub-sections (k) and (o) of Section 10 of 1987 Act read:

(k) Grant approval for starting new technical institution and for introduction of new course or programmes in consultation with the agencies concerned.

(o) Provide guidelines for admission of students to technical institutions and Universities imparting technical education.

These two provisions have to be read harmoniously. Since 'lateral entry', not provided by the Regulations, would either be a 'new course' or 'programme' in Bachelor of Architecture, AICTE has to 'consult' COA before it takes a policy decision thereon. No doubt 'Architecture' also is included in 'Technical Education' defined in Section 2(g) of 1987 Act, as it reads:

"Programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with

the Council, by notification in the Official Gazette, declare."

So, in view of Section 10(o) of 1987 Act it is clear that AICTE can give 'guidelines' for admission, but, it cannot, by itself, without reference to COA, and without 'consulting' it make Resolutions relating to lateral entry and name it as a 'policy decision' and impose the same on COA, because Section 45(2)(e) of 1972 Act and Section 10(k) of 1987 Act have to be read harmoniously. Therefore, the contention of the learned senior counsel for AICTE that COA can only examine the course content prescribed by AICTE, and take a decision whether to recognize the degree obtained by the students are as per the course content prescribed by it, without reference to COA or not, cannot be accepted, because if such a contention is to be accepted, it would certainly put the candidates of such study in jeopardy, because they study Bachelor of Architecture only to be recognized and act as Architects approved by COA, but not merely to have the degree as a suffix to their names or merely for the purpose of acquiring knowledge in architecture, and since COA, under Section 21 of 1972 Act has the exclusive power to prescribe the standards in Architecture education for granting recognition. In fact the learned senior counsel impliedly seems to have conceded such power of the COA, because his contention is that COA can examine the course content and decide whether to grant recognition or not.

16. The fact that a representative of COA is also a member of AICTE, as per Section 3(4)(m)(vi) of 1987 Act, is also of no consequence for determining the alleged superiority of AICTE, because even when such member being on its Board, Section 10 of 1987 Act contemplates 'consultation' and coordination' by AICTE with the 'concerned authorities'. If the contention of the learned senior counsel for AICTE is to be accepted it makes the later part of Section 10(k) of 1987 Act, expecting the AICTE to act in 'consultation' with the 'agencies concerned', otiose. All the above apart the fact that a 'sub-committee' was constituted with the representatives from AICTE and COA, to go into the aspect of lateral entry in Bachelor of Architecture course, also clearly shows that AICTE is fully alive to the fact that it cannot, and should not, take an independent decision on the aspect of lateral entry. Otherwise, there was no need for appointment of such sub-committee.

17. I do not find any force in the contention of the learned senior counsel for AICTE that when COA prescribed Bachelor of Architecture as a qualification for recognition of an Architect in the schedule to 1972 Act, COA ceases to have power or authority to deal with the course contents in Bachelor of Architecture Course, and that only AICTE has the power to decide the course content, because no provision in 1987 Act gives such a wide and sweeping power to AICTE, and by such an interpretation Section 45(2)(e) of 1972 Act would lose its purpose and since Section 10(k) of 1987 Act contemplates AICTE taking decisions in consultation with the 'agencies concerned', which in this case is COA. As rightly contended by the learned counsel for petitioner if the intention of the parliament, while enacting 1987 Act, was to set at naught the power vested in the COA under Section 45(2)(e) of 1972 Act, it would have stated so in 1987 Act, and since it did not do so as per the ratio in **T.J.JOSEPH** and **KEDIA LEATHER AND LIQUOR LIMITED** cases (6 and 7 supra) the contention that 1987 Act impliedly repealed the power of COA under 1972 Act and vested it in AICTE cannot be accepted.

18. Here, I feel it relevant to refer to Section 20 of 1987 Act, which reads as follows:

> "20. (1) The Council shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.
>
> (2) The decision of the Central Government as to whether a question is one of policy or not shall be final."

In para-10 of the counter affidavit filed on behalf of AICTE it is alleged –

> "The All India Council for Technical Education had placed the matter before the HRD., Ministry. The petitioner ought to have given suitable instructions to it. The matter is under consideration."

So it is clear that AICTE, which obviously moved the Government, under Section 20 of 1987 Act, even before the matter is considered by the Central Government, seems to have issued the policy Regulations dated 20-11-2002 in spite of the apex Court holding in **Supreme Court Advocates on-Record Association v. Union of India** that 'consultation' almost amounts to concurrence or consent. Therefore, AICTE ignoring the request of COA to keep the issue relating to lateral entry in abeyance,

and keeping mum on the notification issued by JNTU impugned, is improper.

19. I do not find any force in the contention of the learned senior counsel for AICTE that inasmuch as petitioner did not state if any college or Architecture was established with its (COA) approval only without the approval of AICTE, AICTE only has the power to take decisions on the courses in 'technical education', because it is not the case of AICTE that after the coming into force of 1987 Act COA ceased to have a say with regard to establishment of a new college of Architecture or a new course in the college of Architecture, or that it (AICTE) had permitted colleges of Architecture to come up and permission to introduce new courses in Architecture without consulting, or negativing the views of, COA.

20. Though the documents produced by AICTE, along with the counter affidavit filed on its behalf, show that the Sub-Committee constituted by the All India Board of Architecture for laying down the guidelines for lateral entry into the second year a Bachelor of Architecture course, took a decision to permit lateral entry into Bachelor of Architecture course, AICTE cannot act on that sub-committee report, since any report of any sub-committee has to be accepted or approved by the concerned authority which constituted it. Since the resolution of the sub-committee was not adopted or accepted by the COA and since copies of letters dated 05-02-2003 and 11-03-2003 addressed by COA to AICTE show that the said issue was discussed in the meeting of All India Board of Architectural and Town Planning Education on 12-09-2002 and that it decided to defer the issue relating to lateral entry, it is clear that at present COA is not agreeable for introduction of lateral entry into Bachelor of Architecture course.

21. I feel it unnecessary to go into the interpretation of Regulation 4 of the Regulations with regard to 50% marks at 10+2 level, raised by the learned senior counsel for AICTE for deciding this petition because I find force in the contention of learned senior counsel for AICTE, that diploma holders with 60% marks aggregate from a college of Architecture recognized by AICTE and COA, having entered that

course after a pass in 10+2, being made equivalent to a pass in the first year of Bachelor of Architecture, does not amount to breach of 50% aggregate marks at 10+2 level prescribed by the Regulations, nor does it amount to reducing the course period from 5 years to 4 years, because a student who got less than 50% marks in 10+2 level, if he had improved his level during the study of Diploma Course and obtained 60% marks in Diploma in Architecture course, cannot be said to be less qualified than a student who obtained 50% marks at 10+2 level and passed first year Bachelor of Architecture course. Students, who improved and obtained higher-level qualifications over a period of time, should not be denied admission into a course merely because of their obtaining lesser marks in their earlier education career, and since a candidate before joining the Bachelor of Architecture course under lateral entry scheme, would have studied the course in Architecture for 3 years for obtaining Diploma in Architecture. So, in effect his study for obtaining Bachelor of Architecture degree would be for seven years instead of 5 years, prescribed by the Regulations. Thus, there seems to be no tenable objection for the COA opposing the lateral level entry scheme. But, as held in **THAPPAR INSTITUTE OF ENGINEERING** case (15 supra), **K.K.SIFORA** case (16 supra), **RAJENDRA PRASAD MATHUR** case (17 supra), **LATA ARUN** case (18 supra) and **BOARD OF ADULT EDUCATION AND TRAINING** case (19 supra) since it is not within the purview of this Court to decide qualifications required for a course, and since it is for the experts in education only to decide the same, COA would do better to reconsider the issue and take a decision relating to lateral entry with an open mind.

22. It is unnecessary to go into the questions of the MOU between AICTE and COA and its termination by the AICTE, for disposal of this case because, as stated earlier, both COA and AICTE have to act in coordination as per Section 10 of 1987 Act. Both the bodies should know that none of them is superior to the other. Apparently there seems to be some differences of opinion between the authorities managing the said institutions. They seem to be harbouring a feeling that their body is superior to the other body, forgetting that they are to act in ‘coordination’ but not a ‘confrontation’ with each other, thereby putting the aspirants of lateral entry to jeopardy.

23. In view of the conclusion arrived at by me I feel it unnecessary to refer to all the

other decisions relied on by the learned counsel for the parties, in detail.

24. For the above reasons, I hold that AICTE cannot, without the concurrence of COA introduce any new course, scheme or programme which amounts to tinkering with the Regulations, and so the lateral entry scheme prepared by the respondents is liable to be and hence is quashed.

W.P.No.14245 of 2004:

25. I am unable to agree with the contention of the learned counsel for petitioner that only AICTE, but none else, can return an application for sanction of additional course, etc. because it is well known that all the applications sent to AICTE have to be scrutinized by the staff and officers concerned, to find out if all the requirements laid down for entertaining the application are satisfied or not, and since only valid applications will have to be placed before AICTE for its consideration. Since the fault, in this case, lay with the Government, neither the officer who returned the application of the petitioner, nor the AICTE can be found fault with.

26. Since the petitioner applied for additional course only, and since Government and COA have no objection therefor, I deem it fit to direct AICTE to consider the application of the petitioner for starting the new course sought to be introduced by the petitioner. So, petition can be ordered accordingly.

27. In view of the above, both W.P.Nos.11774 of 2003 and 14245 of 2004 are allowed. Advertisement dated 15-04-2003 issued by the first respondent calling for applications for lateral entry is quashed. AICTE is directed to consider the application of the petitioner in W.P.No.14245 of 2004 and pass appropriate orders on merits on the said application on the basis that both COA and government have no objection for starting of the new course sought by the petitioner. Parties in both the petitions are directed to bear their own costs.

C.Y. SOMAYAJULU, J

Date: 12--07--2005

Cvrk

THAT RULE NISI HAS BEEN MADE ABSOLUTE AS ABOVE.

WITNESS THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE ON THIS TUESDAY THE TWELFTH DAY OF JULY, TWO THOUSAND AND FIVE.

REGISTRAR

To

1. The Registrar, Jawaharlal Nehru Technological University, Masab Tank, Hyderabad.
2. The Regional Officer, The All India Council for Technical Education, AICTE Southern Region Office, Shastri Bhavan, 26, Haddows Road, Chennai - 600 006.
3. The Secretary, Dept. of Education, State of A.P., Secretariat Buildings, Hyderabad.

4. All India Council for Technical Education, Indira Gandhi Sports Complex, I.P. Estate, New Delhi 110 001.
5. Council of Architecture India Habitat Centre, Core 6 A, 1st Floor, Lodhi Road, New Delhi.
3. The Principal Secretary, Higher Education, Education Department, Government of A.P., A.P. Secretariat, Hyderabad.
4. The Director of Technical Education, Govt. of A.P., 5th Floor, B.R.K. Bhawan, Hyderabad.
5. The Convener, PACET-2004 (Admission), Sakathika Vidya Bhawan, Masab Tank, Hyderabad.
6. The Registrar, JNTU, Kukatpally, Hyderabad.

7. 2 copies to the Govt. Pleader for Higher Education, High Court Buildings, Hyderabad.

8. 2 CD copies